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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
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Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185
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	)	

To: The Commission

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REPLY COMMENTS OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

TELECOMMUNICATIONS
RESELLERS ASSOCIATION

By: Charles C. Hunter
Laura C. Mow
Hunter & Mow, P.C.
1620 I Street, N.W.
Suite 701
Washington, D.C. 20006

Its Attorneys

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SUMMARY

The Commission has instituted this proceeding to ensure just and reasonable compensation arrangements between local exchange carriers and cellular mobile service providers. In order to meet this objective and to promote competition in the local markets, the Commission has proposed that all LEC-CMRS interconnection arrangements be based on a "bill and keep" compensation scheme.

The LECs have opposed this plan on the grounds that the FCC lacks the necessary statutory authority in light of the recently enacted Telecommunications Act of 1996. The LECs have not adequately accounted for Section 332(c)(3) of the Communications Act, however, which reserves for the FCC the authority to regulate the rates and entry of CMRS providers. Section 332(c)(3), in combination with Section 201 of the Communications Act, clearly establish a continuing FCC role in LEC-CMRS interconnection matters. Moreover, even if the 1996 Telecommunications Act is considered without reference to these other statutory provisions, the Commission retains the statutory authority necessary to impose a mandatory "bill and keep" compensation arrangement under new Section 251(d)(1). That section authorizes the Commission to adopt regulations necessary to implement the duties enumerated in Section 251, including the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications on rates, terms and conditions that are just, reasonable and nondiscriminatory. Significantly, the 1996 Telecommunications Act expressly identifies "bill and keep" as a permissible form of reciprocal compensation.

The LECs also attack "bill and keep" on public policy grounds, arguing that it is not warranted by current market conditions, that it will result in distorted market signals, that it is

economically inefficient, and that it will give rise to substantial administrative costs. Each of these arguments is amply refuted in the materials before the Commission. Regarding current market conditions, cellular and PCS operators provided substantial evidence of current market conditions clearly establishing the LECs' continuing market power in local markets and their superior bargaining leverage over CMRS providers on interconnection matters. As for market signals, contrary to LEC arguments, "bill and keep" will prevent the distorted market signals currently resulting from above-cost interconnection rates. An imposed symmetrical compensation arrangement will encourage each carrier to increase the efficiencies of its operations to reduce actual costs and to maximize outgoing traffic. As the current traffic imbalance equalizes, "bill and keep" will become even more economically efficient. With respect to assertions that "bill and keep" will result in transitional administrative costs both before and after "bill and keep", the LECs are comparing apples and oranges. The costs associated with "bill and keep" as an interim plan when compared to any other potential interim interconnection arrangement are nominal at best.

TRA agrees with those commenters who argue that the Commission's "bill and keep" arrangement should apply to any point of interconnection to the LEC network. This arrangement best reflects the parallel, co-carrier relationship between LECs and CMRS providers. Finally, TRA agrees that because "bill and keep" is conceptually based on two-way terminating traffic, it is appropriately applied to all commercial mobile services characterized by a two-way traffic flow and should not extend to CMRS with one-way traffic only.

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The Telecommunications Resellers Association ("TRA"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, hereby submits its Reply Comments in response to the comments addressing the Notice of Proposed Rulemaking in the captioned proceeding, FCC 95-505 (released January 11, 1996) (the "Notice"). In the Notice, the Federal Communications Commission (the "Commission" or "FCC") proposes to establish a uniform "bill and keep" compensation arrangement to govern interconnection between commercial mobile radio service ("CMRS") providers and local exchange carriers ("LECs") in order to better promote competition in the local exchange market.[1]

The FCC's "bill and keep" proposal has prompted particularly spirited debate among the commenters on two major issues: (i) whether the FCC has sufficient authority to mandate that all LEC-CMRS interconnection arrangements reflect a "bill and keep" compensation structure

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[1] Notice at ¶¶ 60 & 111.

in light of various relevant statutory provisions including, in particular, new Sections 251 and 252 of the Communications Act of 1934, as amended (the "Communications Act"); and (ii) whether "bill and keep" will advance or hinder the public policy goals articulated by the FCC in this proceeding.[2] The LECs, for the most part, were overwhelmingly opposed to the FCC's proposal to apply a "bill and keep" compensation mechanism to LEC-CMRS interconnection arrangements.[3] These commenters claim that the FCC's Notice is essentially mooted by the recently enacted Telecommunications Act of 1996,[4] and that this legislation forbids a "bill and keep" compensation scheme mandated by the Commission.[5] The LECs further argue in the

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2/ These policy goals include expanding the availability of telecommunications services at the lowest overall cost, a goal which historically has been promoted by encouraging the development of competitive markets. Notice at ¶¶ 4 - 6.

3/ This position, of course, is steadfastly opposed by a substantial number of commenters in this proceeding. See, e.g., Comments of Cox Enterprises, Inc. ("Cox"); Comments of Comcast Corporation ("Comcast"); Comments of American Personal Communications, ("APC"); Comments of Time Warner Communications Holdings, Inc. ("Time Warner"); Comments of the Personal Communications Industry Association, ("PCIA"); Comments of AT&T Corp. ("AT&T"); Comments of MCI Telecommunications Corporation ("MCI"); Comments of Airtouch Communications, Inc. ("Airtouch").

4/ Pub. L. No. 104-104, 110 Stat. 56 (1996) (the "1996 Telecommunications Act").

5/ See Comments of BellSouth Corporation ("BellSouth"), at p. 10 ("[adoption of the FCC's "bill and keep" proposal] would be directly contrary to the comprehensive scheme contained in the 1996 Act."); Comments by Pacific Bell, Pacific Bell Mobile Services, and Nevada Bell (hereinafter, collectively, "Pacific Bell"), at p. iii ("the new Act expressly strips the Commission of authority to mandate the terms and conditions of interconnection."); Comments of US West, Inc. ("US West"), at p. 28 ([mandatory "bill and keep" would] "go against the basic approach of the new Telecommunications Act, which expressly requires LECs to negotiate the terms of interconnection carrier-by-carrier."); Comments of Bell Atlantic, at p. 14.("the Commission's ["bill and keep"] proposal is inconsistent with the new legislative scheme of negotiated interconnection arrangements subject to state commission approval.") See also, Comments of Ameritech, at p. 11 ("[t]he clear intent of Congress was to limit the Commission's authority to the act of responding to a request for interconnection."); Comments of GTE Service Corporation ("GTE"), at p. 10 ([a federal "bill and keep" requirement for LEC-CMRS interconnected traffic would] "run roughshod over the new legal regime created by Congress in the 1996 Act").

alternative that a federally-mandated "bill and keep" LEC-CMRS compensation arrangement for interconnection would fail to promote competition in the local exchange market, and instead would harm the public in a myriad of ways.[6]

TRA believes that the LEC efforts to limit FCC authority over LEC-CMRS interconnection extend well beyond the bounds of reasonable statutory construction. Moreover, LEC factual arguments against "bill and keep" are based on a number of erroneous premises with regard to the LECs' control over the local exchange market and the view of CMRS providers toward LEC-CMRS interconnection. As discussed below, LEC arguments opposing "bill and keep" on the legal grounds that an unlawful "taking" of private property would occur also contain inaccurate characterizations of the "bill and keep" compensation arrangement. Notwithstanding the LECs' arguments to the contrary, it is apparent that the FCC is empowered with the statutory authority necessary to require that all LEC-CMRS interconnection arrangements be based on the "bill and keep" compensation model, a model which in TRA's view, would best advance competition in the local exchange market.

Several parties urge the adoption of certain refinements to the "bill and keep" model initially contemplated in the Notice in order to more effectively advance the public interest goals articulated by the Commission. TRA joins those parties that urge the Commission to make "bill and keep" available at any point of interconnection to the LEC network, and not just at the LEC end-office. In addition, TRA agrees with those parties urging that "bill and keep" should apply to all CMRS services that are capable of providing two way services, including resellers with their own switch facilities.

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[6] See, e.g., US West Comments, at p. 26; Bell Atlantic Comments, at p. 10; Nynex Comments, at p. 28.

I.

DISCUSSION

A. LEC Arguments That The FCC Lacks Sufficient Authority To Mandate "Bill and Keep" Are Not Persuasive

1. The LECs Have Failed To Account Adequately For Other Provisions Of The Communications Act

LEC arguments that the 1996 Telecommunications Act exclusively governs LEC-CMRS interconnection fail to acknowledge the clear import of Section 332(c)(3) of the Communications Act, which reserves for the FCC the authority to regulate the rates and entry of CMRS providers. That provision, adopted in the Omnibus Budget Reconciliation Act of 1994 (the "Budget Act"),[7] expressly limits the states from regulating "the entry or the rates charged by any commercial mobile service," although it does not prohibit a state from regulating "the other terms and conditions of commercial mobile service."[8] Several LECs point to the reference in Section 332(c)(3) to the rates charged "by" any commercial mobile service provider, arguing that this phrase precludes the FCC from regulating rates charged by LECs to CMRS providers.[9] LEC-CMRS interconnection, however, is two-way; traffic is terminated by the CMRS provider

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7/ Pub. L. No. 103-66 (August 10, 1993).

8/ 47 U.S.C. § 332(c)(3). This provision should be read in conjunction with Section 2 of the Communications Act, which establishes the federal/state dual jurisdiction over interstate and intrastate services. In particular, it should be noted that the Budget Act amended Section 2(b) of the Communications Act (which provides for state jurisdiction over intrastate matters), by excepting from such state jurisdiction the authority to regulate the rates and entry of CMRS providers. See 47 U.S.C. § 152(b). The "other terms and conditions" of CMRS left to the states were intended to include matters such as customer billing information and practice, billing disputes and other consumer protection matters. See H.R. Rep. No. 111, 103rd Cong., 1st Sess. 260 (1993). These terms and conditions were not intended to include interconnection rates between LEC and CMRS providers.

9/ See, e.g., Nynex Comments, at p. 41; Pacific Bell Comments, at p. 97.

on the LEC's network and vice versa. It would make no sense to apply Section 332(c)(3) to only one half of the equation, particularly when the Commission has been authorized in the 1996 Telecommunications Act to consider reciprocal compensation arrangements (including "bill and keep").

Moreover, the Budget Act made clear that the authority reserved to the FCC with respect to CMRS extended to matters involving interconnection.[10/] Section 201 of the Communications Act authorizes the Commission to order common carriers to provide service and to make physical interconnection available, upon request.[11/] Section 332(c)(1)(B) explained that it was expanding Commission authority with respect to interconnection requested by CMRS providers as follows:

> Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of Section 201 of this Act. <u>Except to the extent that the Commission is required to respond to such a request</u>, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act.[12/]

This provision makes clear that, with respect to requests from CMRS providers for interconnection, Congress intended to expand the Section 201 interconnection authority granted to the Commission to include interconnection between CMRS providers and LECs, whether or

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10/ Congressional intent to secure the FCC's role with respect to CMRS interconnection is further reflected in its statement with respect to Section 332(c)(1)(B) that it "considers the right to interconnect an important one and one which the Commission shall seek to promote, since interconnection serves to enhance competition and advance a seamless national network." H.R. Rep. No. 103-111, 103rd Cong., 1st Sess., at 261 (1993).

11/ 47 U.S.C. § 201(a).

12/ 47 U.S.C. 332(c)(1)(B)(Emphasis added.).

not the services at issue were deemed to be interstate or intrastate services. Congress further demonstrated its intent that the Commission's existing authority over LEC-CMRS interconnection would not be diminished by the Telecommunications Act of 1996, by explicitly stating in Section 251(i) that the provisions of Section 251 generally should not be construed as limiting or otherwise affecting the Commission's authority under Section 201 of the Communications Act.[13/]

Section 201, Section 332(c)(3) and the 1996 Telecommunications Act, when read together, therefore, clearly contemplate, a continuing, significant involvement by the Commission under each provision with respect to LEC-CMRS interconnection.[14/] These statutes empower the FCC to mandate a "bill and keep" compensation arrangement for all LEC-CMRS interconnection rates, while still permitting the states a role in the implementation of this mandate pursuant to Section 252 of the 1996 Telecommunications Act.

2. An FCC-Imposed "Bill and Keep" Requirement Is Consistent With The 1996 Telecommunications Act.

Having tortuously maneuvered LEC-CMRS interconnection arrangements under the exclusive purview of the 1996 Telecommunications Act, the LECs then point to the state review

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13/ 47 U.S.C. § 251(i).

14/ Many of the LECs point to the <u>1995 Louisiana Rate Petition Order</u> (19 FCC Rcd. 7898, 7908 at ¶ 47), in which the FCC concluded that interconnection charged by landline telephone companies to CMRS providers "[did] not appear to be circumscribed in any way by Section 332(c)(3)" as support for argument that Section 332(c)(3) was not applicable to LEC-CMRS interconnection. <u>See</u>, <u>e.g.</u>, US West Comments, at p. 62, n. 148. As the Commission observes in the <u>Notice</u>, however, a reconsideration of this order is warranted on the grounds that its finding is inconsistent with Section 332(c)(3). <u>Notice</u> at ¶¶ 111 - 112.) To do otherwise would subject the parties of interconnection to disparate (and likely conflicting) regulatory requirements.

provisions in new Section 252 as evidence that all matters involving LEC-CMRS interconnection should be governed by the states rather than the Commission, and assert that the legislation affirmatively forbids imposition of "bill and keep". Unfortunately, even an isolated review of the 1996 Telecommunications Act, without reference to other provisions of the Communications Act, reveals no basis for the LECs' position.

In constructing their argument that the 1996 Telecommunications Act establishes exclusive state authority over all LEC-CMRS interconnection, the LECs point to the procedures established under new Section 252 for LECs to negotiate interconnection agreements with all telecommunications carriers (including CMRS providers) requesting access to the LECs' networks.[15/] These provisions, according to the LECs, dictate a flexible negotiation process for "mutual and reciprocal recovery" of the costs of carrying another carrier's calls, which is regulated exclusively at the state level. Moreover, in the LECs view, this "statutory right" for mutual compensation may be affirmatively waived only by the parties; it cannot be eliminated by a "bill and keep" compensation arrangement imposed by the FCC (or any other regulator for that matter).[16/]

15/ See, e.g., US West Comments, at p. 28. These procedures provide for the submission of negotiated agreements to the pertinent state commissions for approval to ensure that the agreements meet the requirements of the 1996 Telecommunications Act. See 47 U.S.C. §§ 252(e)(1) and (2). At any point in the negotiations, either party may request that the state commission participate and first mediate and then arbitrate the differences of the parties by consistent with to the requirements set out in new Section 251. In the event that a state refuses to act in accordance with these new provisions within specified time frames, Congress further requires the Commission to preempt the state's jurisdiction of the matter at issue and to assume responsibility for such matter. See 47 U.S.C. § 252(e)(5).

16/ See, e.g., BellSouth Comments, at pp. 10-11.

The LECs' view of the scope of Commission authority over LEC-CMRS interconnection matters misreads the 1996 Telecommunications Act. In addition to the general duty to interconnect applicable to all telecommunications carriers, new Section 251 imposes a series of duties on LECs, including the obligation "to establish reciprocal compensation arrangements for the transport and termination of telecommunications."[17/] In addition, incumbent LECs are charged to provide interconnection "on rates, terms, and conditions that are just, reasonable and nondiscriminatory."[18/] Section 252(d)(2)(A) then elaborates on these duties, stating that "the terms and conditions for reciprocal compensation [shall not be considered] to be just and reasonable unless . . . [they] provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." Section 252(d)(2)(B)(i), in turn, explicitly identifies "bill and keep" as a just and reasonable compensation arrangement by including as one form of "reciprocal compensation" the "offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill and keep arrangements)."[19/] These statutory provisions establish, therefore, that the LEC and CMRS provider are each obligated to terminate the other's traffic; "bill and keep" merely offsets these reciprocal obligations in an efficient and entirely permissible way.[20/]

17/ 47 U.S.C. § 251(b)(5).

18/ 47 U.S.C. § 251(c)(2)(D).

19/ 47 U.S.C. § 252(d)(2)(B)(i).

20/ Neither does this statutory provision require that the traffic levels between the two parties be precisely balanced before a "bill and keep" model may be used; the reciprocity goes to the obligations of each party to terminate traffic on each other's network, rather than to the amount of traffic being terminated on each network.

Having designated "bill and keep" as a permissible form of "reciprocal compensation," Congress – in Section 251(d) – then expressly authorized the FCC (and not the state commissions) to adopt regulations to implement the Section 251 interconnection duties to be imposed on the LECs.[21/] Far from negating the negotiations and state review process described in Section 252, a federally-mandated "bill and keep" arrangement for all LEC-CMRS interconnection arrangements merely establishes the framework for those negotiations and the standards for state review.[22/] The selection by the Commission in this proceeding of a "bill and keep" compensation model for all LEC-CMRS interconnection arrangements, therefore, is entirely consistent with the legislative scheme established by the 1996 Telecommunications Act.

Moreover, contrary to LEC arguments,[23/] a plain reading of new Section 252(d)(2)(B)(i) nowhere restricts "bill and keep" to situations where the LEC and the CMRS provider have voluntarily waived mutual recovery through the negotiations process. Indeed, this statutory provision essentially notes only that Section 252 does not preclude "bill and keep" arrangements. That section does not declare that the parties alone have the authority to define the manner in which the original obligations are offset. The arrangements ultimately agreed to by the LEC and the CMRS provider are acceptable under Section 252(d)(2)(B)(1) only if they are deemed to be "just and reasonable" under Section 251(b)(5), and it is the Commission (under Section

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21/ 47 U.S.C. § 251(d)(1).

22/ It should be noted that this proceeding applies only to a particular subset of interconnection arrangements: those between LECs and CMRS providers. The 1996 Telecommunications Act, of course, is far broader in scope and is intended to cover interconnection arrangements between many other types of carriers.

23/ See, e.g., Pacific Bell Comments, at p. 94; see also, Letter from Michael K. Kellogg, Counsel for Bell Atlantic and Pacific Telesis, to William F. Caton, February 26, 1996 (CC Docket No. 95-185).

251(d)(1)) that is charged with fashioning regulations sufficient to implement the duties established in Section 251. A "bill and keep" compensation arrangement imposed externally by the Commission, therefore, is well within a reasonable statutory construction of new Section 252(d)(2)(B)(i), and indeed, is the more logical reading of that section since it does not rely on the additional assumptions and conclusions by implication which are essential to support the LECs' interpretation of this provision.

3. A Mandatory "Bill and Keep" Compensation Arrangement Will Not Constitute A "Taking" Of LECs' Property

Several LECs object to the proposed "bill and keep" compensation arrangement on the ground that it will constitute a "taking" of LECs' property.[24/] The LECs' arguments in this regard are founded upon a single, erroneous factual premise: that they will be completely deprived of any compensation for the costs associated with terminating CMRS traffic. As several states have already found,[25/] however, the LECs' premise in this regard simply is not true. Under the Notice, the LECs are free to recover all of the costs of terminating calls from their own customers, all of whom are appropriately charged for these calls since they receive the benefit of the terminated traffic from the CMRS providers.[26/] Moreover, it should be noted that "bill and keep" contemplates an offsetting of the LEC's and the CMRS provider's respective

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24/ See, e.g., Pacific Bell Comments, at pp. 82 - 87; Bell Atlantic Comments, at pp. 8 - 9.

25/ See, e.g., Washington Utilities & Trans. Comm'n v. U.S. West Communications, Inc., 1995 Wash. UTC LEXIS 47, *76 (Washington Utilities Trans. Comm'n, Oct. 31, 1995) ("Washington Order"); Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service, 1995 Cal. PUC LEXIS 788, *28, 165 P.U.R. 4th (Cal. Public Utilities Comm'n, 1995) ("California Order").

26/ Notice at ¶ 60.

obligations to terminate calls on the other's network.[27] The LEC receives a tangible benefit in return for permitting the CMRS provider to terminate its traffic on the LEC network; the LEC, in turn, is permitted to terminate its traffic on the CMRS network. The compensation to each carrier, while different from the traditional compensation the LECs have come to expect, is no less tangible. A "taking" argument, therefore, cannot stand.

B. LEC Attacks On The Public Policy Benefits Of "Bill and Keep" Are Not Convincing.

In addition to challenging the legal basis for an FCC-mandated "bill and keep" compensation scheme for CMRS-LEC interconnection arrangements, the LECs argue that "bill and keep" would not advance the public policy goals articulated by the FCC in this proceeding. Several LECs assert, for example, that current market conditions do not warrant imposition of a "bill and keep" compensation model.[28] Other parties claim that "bill and keep" will distort the market by preventing LECs from recovering costs from the cost contributor and that the "bill and keep" mechanism is economically inefficient.[29] Still other LECs allege that "bill and keep" will give rise to substantial administrative costs.[30] These arguments simply are not convincing.

27/ There is substantial evidence in the record indicating that the LECs have refused to compensate the CMRS providers for the costs associated with terminating traffic on the CMRS providers' networks. See, e.g., APC Comments, at p. 4. Having actively refused to compensate CMRS providers for the same services at issue here, LEC assertions of a "taking" of their property seem disingenuous at best.

28/ See, e.g., US West Comments, at pp. 3-15; Bell Atlantic Comments, at p. 10.

29/ See, e.g., Nynex Comments, at p. 28.

30/ See, e.g., Comments of the United States Telephone Association ("USTA"), at p. 21; Nynex Comments, at p. 26.

First, consideration of current market conditions clearly supports the imposition of a "bill and keep" compensation model for LEC-CMRS interconnection arrangements. The LECs currently are possessed of substantial market power in their local markets; even the LECs themselves do not seriously dispute this premise.[31/] When negotiating for interconnection to each other's networks, the relative bargaining power of the LECs and CMRS providers is anything but equal. In direct contrast to LEC assertions here, many of the commenters in this proceeding presented specific factual evidence of abuse by LECs of their market power.[32/] Cellular operators unaffiliated with LECs also documented the continuing struggle for fair interconnection arrangements.[33/] And at least one recently established PCS system operator characterized its current interconnection arrangement as "flawed" and "starkly asymmetrical."[34/] The weight of

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31/ Indeed, the LECs arguments on this point are limited to observing the absence of formal complaints on LEC-CMRS interconnection arrangements and on asserting that CMRS providers are "happy" with the status quo based on general statements from such providers in other proceedings before the Commission. See, e.g., USTA Comments, at p. 4; US West Comments, at pp. 22-23.

32/ See, e.g., Comcast Comments, at pp. 4-8.

33/ See, e.g., Comments of Airtouch Comments, at p. 32 & Appendix A; Comcast Comments, at pp. 4-8. Several LECs point to the growth of cellular as "evidence" that problems with interconnection have not hurt development of that service and that improvements in interconnection (such as "bill and keep") are not needed. See, e.g., Nynex Comments, at pp. 11-13. These comments ignore the documented history of these two groups with respect to interconnection, however, in which repeated FCC intervention for assistance on interconnection was sought and obtained. Simply because cellular has exhibited strong growth does not mean that LEC recalcitrance on interconnection matters has not impeded that growth. It also should be remembered that LEC affiliates currently constitute a significantly larger portion of the universe of cellular operators than in the early days of that service. Moreover, CMRS encompasses far more services than cellular -- some of which are only now entering the market. These carriers -- at least initially -- are not likely to possess the same bargaining power as cellular carriers who have occupied their markets for some time.

34/ APC Comments, at pp. 4 -6. According to APC, under its interconnection agreement, the LEC receives revenue from the PCS operator on all calls and the PCS operator receives revenue from the LEC on none. Id.

evidence presented in this proceeding as to current market conditions, therefore, amply supports the imposition of a "bill and keep" compensation arrangement.

Second, contrary to LEC warnings of distorted market signals, "bill and keep" will prevent the LECs from exploiting their market power by extracting above-cost interconnection rates from CMRS providers and refusing to pay a compensatory rate for their terminating traffic.[35/] "Bill and keep" best addresses the current market imbalance by imposing a symmetrical compensation arrangement on the parties that, in turn, will encourage each carrier to increase the efficiency of its operations to reduce actual costs and to maximize outgoing traffic. Far from sending the wrong economic signals, "bill and keep" will protect against the wrong signals that currently emanate from above-cost interconnection rates. Studies have shown that the average incremental cost of terminating traffic at LEC end offices is $.002 per minute.[36/] Most interconnection rates currently in place substantially exceed this cost and have done so for years; LEC concerns about recovering the cost from the cost contributor, therefore, seem somewhat disingenuous. In any event, if actual incremental costs are slightly higher than expected in the short term, TRA submits that the impact on market signals will be less distorted than those signals resulting from above-cost interconnection rates.

Third, LEC complaints as to the economic efficiency of "bill and keep" focus too narrowly on the short term. "Bill and keep" is economically efficient if (i) traffic flow is roughly balanced in either direction; or (ii) actual costs of terminating traffic are low in relation

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35/ Indeed, the evidence suggests that any distortions in the market are solely the result of the LECs' ability to extract above-cost interconnection (and other) rates from CMRS providers (and other carriers) due to their substantial market power.

36/ Gerald W. Brock, The Economics of Interconnection: Incremental Cost of Local Usage (April 1995).

to the transactional costs of measuring and charging for terminating traffic.[37] While traffic flow may not be entirely balanced at the present time,[38] the actual costs associated with terminating traffic are well below the administrative and transactional costs associated with measuring and charging for the terminating traffic. Moreover, the value of "bill and keep" will only increase as the traffic imbalance begins to equalize.

Finally, LEC claims that "bill and keep" will result in substantial administrative costs lack conviction. Some LECs argue that there will be administrative costs associated with implementation of a billing system after the "interim" "bill and keep" mechanism has been phased out and that there also will be costs to transition from the current billing system to a "bill and keep" arrangement.[39] While there may well be administrative costs associated with implementing a different long-term system at the end of the interim period, "bill and keep" is far more cost efficient than any other interim solution. The analysis as to whether to select "bill and keep" on an interim basis should not be misdirected by focusing on the administrative costs associated with the interconnection model selected over the long term. Nor should administrative costs associated with transitioning the systems currently in place into an interim system enter into the cost analysis, since presumably these transition costs would be the same whatever the interim system selected. The important comparison is the one between the different

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[37] See Ex Parte Letter from Randall S. Coleman, Vice President for Regulatory Policy and Law, CTIA to Regina Keeney, Chief, Common Carrier Bureau, Federal Communications Commission, Attachment at 1, December 8, 1995; See also Ex Parte Letter from Robert F. Roche, CTIA, to Mr. William F. Caton, Acting Secretary, Federal Communications Commission, filed in CC Docket No. 94-54, December 8, 1995, Gerald W. Brock, The Economics of Interconnection: Incremental Cost of Local Usage (April 1995).

[38] There is some evidence form PCS operators that this traffic balance may well be moving in the right direction. See, e.g., APC Comments at pp. 9 - 11.

[39] See, e.g., Nynex Comments, at p. 26.

interim systems under consideration. And there can be no argument that the administrative costs of implementing a "bill and keep" system are far less than the administrative costs associated with traditional cash-based compensation methods for the simple reason that, under "bill and keep", the interconnecting carriers will not incur the expense of measuring, collecting and auditing traffic.

The Commission should resist LEC efforts to disparage the benefits of "bill and keep". The Commission has astutely identified as a matter of paramount concern the encouragement of competition in the local exchange markets. "Bill and keep" promotes this goal by foreclosing one avenue of the LECs' ability to abuse their market power to the detriment of competitive advances. Accordingly, TRA urges the Commission to stay the course and adopt, on an interim basis, a "bill and keep" compensation model for LEC-CMRS interconnection arrangements.

C. TRA Agrees That "Bill and Keep" Should Be Available At Any Point Of Interconnection To The LEC Network

Many commenters questioned the Commission's proposal to require "bill and keep" only for terminating calls at the LECs' end office, arguing that "bill and keep" should be available at any point of interconnection to the LEC network -- whether it be an end-office or a tandem switch.[40] According to these parties, this more expansive form of "bill and keep" is necessary to accurately reflect the parallel, co-carrier relationship between LECs and CMRS providers.

TRA agrees with these commenters that the same considerations justifying application of a "bill and keep" plan to the LEC end office-to-subscriber link apply equally to the entire

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40/ See, e.g., Comcast Comments, at p. 22; Cox Comments, at p. 31; MCI Comments, at p. 4; AT&T Comments, at p. 11.

terminating path.[41] If CMRS providers and LECs are going to function effectively as co-carriers, they should be subject to the same burdens and receive the same benefits with respect to their networks. To the extent that "bill and keep" is limited to the end office only, the LEC compensation arrangements would have two components -- the first component (end office to subscriber) governed by "bill and keep" and the second component (switch-to-switch or switch-to-end office) governed by access charges. CMRS providers, by contrast, would be entirely under the "bill and keep" portion of the compensation arrangement, even though they provide analogous switching and transport services for LECs. Under such an arrangement, the CMRS provider would be required to pay substantial sums to the LEC operator, but the LEC would pay nothing to the CMRS provider. This result would undermine the purpose for adopting "bill and keep" in the first place; accordingly, the broader application of "bill and keep" is warranted.[42]

D. The Interconnection Rules In This Proceeding Should Apply To All CMRS Services With Two-Way Traffic Flows

In its comments, TRA urged the Commission to apply the interconnection rules adopted in this proceeding to all CMRS providers in order to ensure that the benefits to be derived thereunder are equally available to all services subject to the same regulations.[43] As a

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41/ This position represents an evolution in the position taken by TRA in its opening comments. See TRA Comments, at p. 6, n.8. Having reviewed the comments on this issue, TRA now has a greater appreciation for the fact that the reciprocal obligations extend to the entire terminating path.

42/ TRA also agrees with those commenters who argue that the costs for dedicated transmission facilities between CMRS MTSOs and LEC networks should be shared equally by the LECs and CMRS providers. See, e.g., Airtouch Comments, at p. 9; APC Comments, at pp. 7-8. Such sharing would reflect the fact that subscribers from both networks benefit from these facilities.

43/ TRA Comments, at pp. 14-16.

conceptual matter, however, "bill and keep" only works when there is a two-way traffic flow. To the extent that a particular service generates one-way traffic only -- as is the case in certain narrowband CMRS -- "bill and keep" would not be appropriate since it provides no compensation for the costs incurred in terminating calls.[44] For this reason, TRA agrees with those commenters urging the Commission to limit "bill and keep" only to those commercial mobile radio services which are capable of carrying two-way traffic.[45]

II.

CONCLUSION

The Commission has recognized the importance of assuring the ability of CMRS providers to interconnect to LEC networks on reasonable terms and conditions. In order to achieve this objective and to further the public interest goals underlying this objective, TRA submits that the Commission has ample authority to adopt a "bill and keep" policy for interconnection rates between CMRS providers and LECs. TRA urges, therefore, that the Commission adopt the "bill and keep" standard on an interim basis, mandate that the states apply the "bill and keep" compensation standard in carrying out their Section 242 review process of

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44/ New Par argues that these rules should not extend to resellers of CMRS because they are not facilities-based carriers. New Par Comments, at p. 28. Many resellers may have their own switch and receive LEC terminating traffic directly into those switches. These carriers are entitled to the benefits of "bill and keep" to the same extent as any facilities-based carrier; TRA therefore urges the Commission to apply any rules adopted here to such resellers.

45/ See, e.g., PCIA Comments, at p. 11.

all interconnection agreements, and apply the new rules adopted in this proceeding to all commercial mobile radio services capable of two-way communications.

Respectfully submitted,

TELECOMMUNICATIONS RESELLERS ASSOCIATION

By: Laura C. Mow

Charles C. Hunter
Laura C. Mow
Hunter & Mow, P.C.
1620 I Street, N.W.
Suite 701
Washington, D.C. 20006

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Its Attorneys